

[COMMITTEE PRINT]

MARCH 19, 2002

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 3762
OFFERED BY MR. BOEHNER**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Pension Security Act of 2002”.

4 (b) **TABLE OF CONTENTS.**—The table of contents is
5 as follows:

Sec. 1. Short title.

TITLE I—IMPROVEMENTS IN PENSION SECURITY

- Sec. 101. Periodic pension benefits statements.
- Sec. 102. Protection from suspensions, limitations, or restrictions on ability of participant or beneficiary to direct or diversify plan assets.
- Sec. 103. Limitations on restrictions of investments in employer securities.
- Sec. 104. Prohibited transaction exemption for the provision of investment advice.
- Sec. 105. Insider trades during pension plan suspension periods prohibited.
- Sec. 106. Effective dates of title and related rules.

TITLE II—ADDITIONAL PROVISIONS

- Sec. 201. Amendments to Retirement Protection Act of 1994.
- Sec. 202. Notice and consent period regarding distributions.
- Sec. 203. Annual report dissemination.
- Sec. 204. Technical corrections to Saver Act.
- Sec. 205. Missing participants.
- Sec. 206. Reduced pbge premium for new plans of small employers.
- Sec. 207. Reduction of additional pbge premium for new and small plans.
- Sec. 208. Authorization for PBGC to pay interest on premium overpayment refunds.
- Sec. 209. Substantial owner benefits in terminated plans.
- Sec. 210. Benefit suspension notice.

Sec. 211. Studies.
Sec. 212. Interest rate range for additional funding requirements.
Sec. 213. Provisions relating to plan amendments.

1 **TITLE I—IMPROVEMENTS IN**
2 **PENSION SECURITY**

3 **SEC. 101. PERIODIC PENSION BENEFITS STATEMENTS.**

4 (a) REQUIREMENTS.—

5 (1) IN GENERAL.—Section 105(a) of the Em-
6 ployee Retirement Income Security Act of 1974 (29
7 U.S.C. 1025 (a)) is amended to read as follows:

8 “SEC. 105. (a)(1)(A) The administrator of an indi-
9 vidual account plan shall furnish a pension benefit
10 statement—

11 “(i) to each plan participant at least annually,

12 “(ii) to each plan beneficiary upon written re-
13 quest, and

14 “(iii) in the case of an applicable individual ac-
15 count plan, to each plan participant (and to each
16 beneficiary with a right to direct investments) at
17 least quarterly).

18 “(B) The administrator of a defined benefit plan
19 shall furnish a pension benefit statement—

20 “(i) at least once every 3 years to each partici-
21 pant with a nonforfeitable accrued benefit who is
22 employed by the employer maintaining the plan at
23 the time the statement is furnished to participants,
24 and

1 “(ii) to a plan participant or plan beneficiary of
2 the plan upon written request.

3 “(2) A pension benefit statement under paragraph
4 (1)—

5 “(A) shall indicate, on the basis of the latest
6 available information—

7 “(i) the total benefits accrued, and

8 “(ii) the nonforfeitable pension benefits, if
9 any, which have accrued, or the earliest date on
10 which benefits will become nonforfeitable,

11 “(B) shall be written in a manner calculated to
12 be understood by the average plan participant, and

13 “(C) may be provided in written form or in
14 electronic or other appropriate form to the extent
15 that such form is reasonably accessible to the recipi-
16 ent.

17 “(3)(A) In the case of a defined benefit plan, the re-
18 quirements of paragraph (1)(B)(i) shall be treated as met
19 with respect to a participant if the administrator provides
20 the participant at least once each year with notice of the
21 availability of the pension benefit statement and the ways
22 in which the participant may obtain such statement. Such
23 notice shall be provided in written, electronic, or other ap-
24 propriate form, and may be included with other commu-

1 nications to the participant if done in a manner reasonably
2 designed to attract the attention of the participant.

3 “(B) The Secretary may provide that years in which
4 no employee or former employee benefits (within the
5 meaning of section 410(b) of the Internal Revenue Code
6 of 1986) under the plan need not be taken into account
7 in determining the 3-year period under paragraph
8 (1)(B)(i).”.

9 (2) CONFORMING AMENDMENTS.—

10 (A) Section 105 of the Employee Retirement
11 Income Security Act of 1974 (29 U.S.C.
12 1025) is amended by striking subsection (d).

13 (B) Section 105(b) of such Act (29 U.S.C.
14 1025(b)) is amended to read as follows:

15 “(b) In no case shall a participant or beneficiary of
16 a plan be entitled to more than one statement described
17 in subsection (a)(1)(A) or (a)(1)(B)(ii), whichever is appli-
18 cable, in any 12-month period, unless such report is re-
19 quired under subsection (a) to be furnished at least quar-
20 terly.”.

21 (3) EFFECTIVE DATE OF SUBSECTION.—The
22 amendments made by this subsection shall take ef-
23 fect for plan years beginning on or after January 1,
24 2003.

1 (b) INFORMATION REQUIRED FROM APPLICABLE IN-
2 DIVIDUAL ACCOUNT PLANS.—Section 105 of such Act (as
3 amended by subsection (a)) is amended further by adding
4 at the end the following new subsection:

5 “(d)(1) The statements required to be provided at
6 least quarterly under subsection (a) shall include (together
7 with the information required in subsection (a)) the fol-
8 lowing:

9 “(A) the value of investments allocated to the
10 individual account, including the value of any assets
11 held in the form of employer securities, without re-
12 gard to whether such securities were contributed by
13 the plan sponsor or acquired at the direction of the
14 plan or of the participant or beneficiary, and an ex-
15 planation of any limitations or restrictions on the
16 right of the participant or beneficiary to direct an
17 investment; and

18 “(B) an explanation, written in a manner cal-
19 culated to be understood by the average plan partici-
20 pant, of the importance, for the long-term retire-
21 ment security of participants and beneficiaries, of a
22 well-balanced and diversified investment portfolio,
23 including a discussion of the risk of holding substan-
24 tial portions of a portfolio in the security of any one
25 entity, such as employer securities.

1 “(2) The value of any employer securities that are
2 not readily tradable on an established securities market
3 that is required to be reported under paragraph (1)(A)
4 may be determined by using the most recent valuation of
5 the employer securities.

6 “(3) The statements required to be provided at least
7 quarterly under subsection (a) shall be in writing, except
8 that such statements may be in electronic or other form
9 to the extent that such form is reasonably accessible to
10 the recipient.

11 “(4) The Secretary shall issue guidance and model
12 notices which meet the requirements of this subsection.”.

13 (c) DEFINITION OF APPLICABLE INDIVIDUAL AC-
14 COUNT PLAN.—Section 3 of such Act (29 U.S.C. 1002)
15 is amended by adding at the end the following new sub-
16 section:

17 “(42) The term ‘applicable individual account plan’
18 means any individual account plan, except that such term
19 does not include an employee stock ownership plan (within
20 the meaning of section 4975(e)(7) of the Internal Revenue
21 Code of 1986) unless there are any contributions to such
22 plan (or earnings thereunder) held within such plan that
23 are subject to subsection (k)(3) or (m)(2) of section 401
24 of the Internal Revenue Code of 1986.”.

1 (d) CIVIL PENALTIES FOR FAILURE TO PROVIDE
2 QUARTERLY BENEFIT STATEMENTS.—Section 502 of
3 such Act (29 U.S.C. 1132) is amended—

4 (1) in subsection (a)(6), by striking “(5), or
5 (6)” and inserting “(5), (6), or (7)”;

6 (2) by redesignating paragraph (7) of sub-
7 section (c) as paragraph (8); and

8 (3) by inserting after paragraph (6) of sub-
9 section (c) the following new paragraph:

10 “(7) The Secretary may assess a civil penalty against
11 any plan administrator of up to \$1,000 a day from the
12 date of such plan administrator’s failure or refusal to pro-
13 vide participants or beneficiaries with a benefit statement
14 on at least a quarterly basis in accordance with section
15 105(a).”.

16 (e) MODEL STATEMENTS.—The Secretary of Labor
17 shall, not later than January 1, 2003, issue initial guid-
18 ance and a model benefit statement, written in a manner
19 calculated to be understood by the average plan partici-
20 pant, that may be used by plan administrators in com-
21 plying with the requirements of section 105 of the Em-
22 ployee Retirement Income Security Act of 1974. The Sec-
23 retary may promulgate such interim final rules as the Sec-
24 retary determines are appropriate to carry out the amend-
25 ments made by this section.

1 **SEC. 102. PROTECTION FROM SUSPENSIONS, LIMITATIONS,**
2 **OR RESTRICTIONS ON ABILITY OF PARTICI-**
3 **PANT OR BENEFICIARY TO DIRECT OR DI-**
4 **VERSIFY PLAN ASSETS.**

5 (a) NOTICE REQUIREMENTS.—

6 (1) IN GENERAL.—Section 101 of the Employee
7 Retirement Income Security Act of 1974 (29 U.S.C.
8 1021) is amended—

9 (A) by redesignating the second subsection
10 (h) as subsection (j); and

11 (B) by inserting after the first subsection
12 (h) the following new subsection:

13 “(i) NOTICE OF SUSPENSION, LIMITATION, OR RE-
14 STRICTION ON ABILITY OF PARTICIPANT OR BENEFICIARY
15 TO DIRECT INVESTMENTS IN INDIVIDUAL ACCOUNT
16 PLAN.—

17 “(1) IN GENERAL.—In the case of any action
18 having the effect of temporarily suspending, limiting,
19 or restricting any ability of participants or bene-
20 ficiaries under an applicable individual account plan,
21 which is otherwise available under the terms of such
22 plan, to direct or diversify assets credited to their
23 accounts, if such suspension, limitation, or restric-
24 tion is for any period of more than 3 consecutive cal-
25 endar days, the plan administrator shall—

1 “(A) determine, in accordance with the re-
2 quirements of part 4, that the expected period
3 of suspension, limitation, or restriction is rea-
4 sonable, and

5 “(B) after making the determination under
6 subparagraph (A), notify the plan participants
7 and beneficiaries of such action in accordance
8 with this subsection.

9 “(2) NOTICE REQUIREMENTS.—

10 “(A) IN GENERAL.—The notices described
11 in paragraph (1) shall be written in a manner
12 calculated to be understood by the average plan
13 participant and shall include—

14 “(i) the reasons for the suspension,
15 limitation, or restriction,

16 “(ii) an identification of the invest-
17 ments affected,

18 “(iii) the expected period of the sus-
19 pension, limitation, or restriction,

20 “(iv) a statement that the plan ad-
21 ministrator has evaluated the reasonable-
22 ness of the expected period of suspension,
23 limitation, or restriction,

24 “(v) a statement that the participant
25 or beneficiary should evaluate the appro-

1 priateness of their current investment deci-
2 sions in light of their inability to direct or
3 diversify assets credited to their accounts
4 during the expected period of suspension,
5 limitation, or restriction, and

6 “(vi) such other matters as the Sec-
7 retary may include in the model notices
8 issued under subparagraph (E).

9 “(B) PROVISION OF NOTICE.—Except as
10 otherwise provided in this subsection, notices
11 described in paragraph (1) shall be furnished to
12 all participants and beneficiaries under the plan
13 at least 30 days in advance of the action sus-
14 pending, limiting, or restricting the ability of
15 the participants or beneficiaries to direct or di-
16 versify assets.

17 “(C) EXCEPTION TO 30-DAY NOTICE RE-
18 QUIREMENT.—In any case in which—

19 “(i) a fiduciary of the plan deter-
20 mines, in writing, that a deferral of the
21 suspension, limitation, or restriction would
22 violate the requirements of subparagraph
23 (A) or (B) of section 404(a)(1), or

24 “(ii) the inability to provide the 30-
25 day advance notice is due to events that

1 were unforeseeable or circumstances be-
2 yond the reasonable control of the plan ad-
3 ministrator,

4 subparagraph (B) shall not apply, and the no-
5 tice shall be furnished to all participants and
6 beneficiaries under the plan as soon as reason-
7 ably possible under the circumstances.

8 “(D) WRITTEN NOTICE.—The notice re-
9 quired to be provided under this subsection
10 shall be in writing, except that such notice may
11 be in electronic or other form to the extent that
12 such form is reasonably accessible to the recipi-
13 ent.

14 “(E) MODEL NOTICES.—The Secretary
15 shall issue model notices which meet the re-
16 quirements of this paragraph.

17 “(3) EXCEPTION FOR SUSPENSIONS, LIMITA-
18 TIONS, OR RESTRICTIONS WITH LIMITED APPLICA-
19 BILITY.—In any case in which the suspension, limi-
20 tation, or restriction described in paragraph (1)—

21 “(A) applies only to 1 or more individuals,
22 consisting solely of the participant, an alternate
23 payee (as defined in section 206(d)(3)(K)), or
24 any other beneficiary pursuant to a qualified

1 domestic relations order (as defined in section
2 206(d)(3)(B)(i)), or

3 “(B) applies only to 1 or more participants
4 or beneficiaries in connection with a merger, ac-
5 quisition, divestiture, or similar transaction in-
6 volving the plan or plan sponsor and occurs
7 solely in connection with becoming or ceasing to
8 be a participant or beneficiary under the plan
9 by reason of such merger, acquisition, divesti-
10 ture, or transaction,

11 the requirement of this subsection that the notice be
12 provided to all participants and beneficiaries shall be
13 treated as met if the notice required under para-
14 graph (1) is provided to all the individuals referred
15 to in subparagraph (A) or (B) to whom the suspen-
16 sion, limitation, or restriction applies as soon as rea-
17 sonably practicable in advance of the suspension,
18 limitation, or restriction.

19 “(4) CHANGES IN EXPECTED PERIOD OF SUS-
20 PENSION, LIMITATION, OR RESTRICTION.—If, fol-
21 lowing the furnishing of the notice pursuant to this
22 subsection, there is a change in the expected period
23 of the suspension, limitation, or restriction on the
24 right of a participant or beneficiary to direct or di-
25 versify assets, the administrator shall provide af-

1 fected participants and beneficiaries notice of the
2 change as soon as reasonably practicable in advance
3 of the change. Such notice shall meet the require-
4 ments of subparagraphs (A) and (D) of paragraph
5 (2) in relation to the extended suspension, limita-
6 tion, or restriction.

7 “(5) REGULATORY EXCEPTIONS.—The Sec-
8 retary may provide by regulation for additional ex-
9 ceptions to the requirements of this subsection which
10 the Secretary determines are in the interests of par-
11 ticipants and beneficiaries.

12 “(6) GUIDANCE AND MODEL NOTICES.—The
13 Secretary shall issue guidance and model notices
14 which meet the requirements of this subsection.”.

15 (2) ISSUANCE OF INITIAL GUIDANCE AND
16 MODEL NOTICE.—The Secretary of Labor shall issue
17 initial guidance and a model notice pursuant to sec-
18 tion 101(i)(6) of the Employee Retirement Income
19 Security Act of 1974 (as added by this subsection)
20 not later than January 1, 2003. The Secretary may
21 promulgate such interim final rules as the Secretary
22 determines are appropriate to carry out the amend-
23 ments made by this section.

1 (b) CIVIL PENALTIES FOR FAILURE TO PROVIDE
2 NOTICE.—Section 502 of such Act (as amended by section
3 2(b)) is amended further—

4 (1) in subsection (a)(6), by striking “(6), or
5 (7)” and inserting “(6), (7), or (8)”;

6 (2) by redesignating paragraph (8) of sub-
7 section (c) as paragraph (9); and

8 (3) by inserting after paragraph (7) of sub-
9 section (c) the following new paragraph:

10 “(8) The Secretary may assess a civil penalty against
11 a plan administrator of up to \$100 a day from the date
12 of the plan administrator’s failure or refusal to provide
13 notice to participants and beneficiaries in accordance with
14 section 101(i). For purposes of this paragraph, each viola-
15 tion with respect to any single participant or beneficiary,
16 shall be treated as a separate violation.”.

17 (c) INAPPLICABILITY OF RELIEF FROM FIDUCIARY
18 LIABILITY DURING SUSPENSION OF ABILITY OF PARTICI-
19 PANT OR BENEFICIARY TO DIRECT INVESTMENTS.—Sec-
20 tion 404(c)(1) of such Act (29 U.S.C. 1104(c)(1)) is
21 amended—

22 (1) by redesignating subparagraphs (A) and
23 (B) as clauses (i) and (ii), respectively, and by in-
24 serting “(A)” after “(c)(1)”;

1 (2) in subparagraph (A)(ii) (as redesignated by
2 paragraph (1)), by inserting before the period the
3 following: “, except that this clause shall not apply
4 in connection with such participant or beneficiary
5 for any period during which the ability of such par-
6 ticipant or beneficiary to direct the investment of the
7 assets in his or her account is suspended by a plan
8 sponsor or fiduciary”; and

9 (3) by adding at the end the following new sub-
10 paragraphs:

11 “(B) If the person referred to in subparagraph (A)(ii)
12 authorizing a suspension meets the requirements of this
13 title in connection with authorizing the suspension, such
14 person shall not be liable under this title for any loss oc-
15 curring during the suspension as a result of any exercise
16 by the participant or beneficiary of control over assets in
17 his or her account prior to the suspension. Matters to be
18 considered in determining whether such person has satis-
19 fied the requirements of this title include whether such
20 person—

21 “(i) has considered the reasonableness of the
22 expected period of the suspension as required under
23 section 101(i)(1)(A),

24 “(ii) has provided the notice required under sec-
25 tion 101(i)(1)(B), and

1 “(iii) has acted solely in the interest of plan
2 participants and beneficiaries in determining to
3 enter into the suspension.

4 “(C) Any limitation or restriction that may govern
5 the frequency of transfers between investment vehicles
6 shall not be treated as a suspension referred to in subpara-
7 graph (A)(ii) to the extent such limitation or restriction
8 is disclosed to participants or beneficiaries through the
9 summary plan description or materials describing specific
10 investment alternatives under the plan.”.

11 **SEC. 103. LIMITATIONS ON RESTRICTIONS OF INVEST-**
12 **MENTS IN EMPLOYER SECURITIES.**

13 (a) AMENDMENTS TO THE EMPLOYEE RETIREMENT
14 INCOME SECURITY ACT OF 1974.—

15 (1) IN GENERAL.—Section 407 of the Employee
16 Retirement Income Security Act of 1974 (29 U.S.C.
17 1107) is amended by adding at the end the following
18 new subsection:

19 “(g)(1) An applicable individual account plan which
20 holds employer securities that are readily tradable on an
21 established securities market may not acquire or hold any
22 employer securities with respect to which there is any re-
23 striction on divestment by a participant or beneficiary, un-
24 less the plan provides that the restriction—

1 “(A) is not applicable on or after a date which
2 is not later than the date on which the participant
3 has completed 3 years of participation (as defined in
4 subsection (b)(4)) under the plan or (if the plan so
5 provides) 3 years of service (as defined in section
6 203(b)(2)) with the employer, or

7 “(B) is not applicable, with respect to any em-
8 ployer security allocated to the individual account
9 during any calendar quarter, after a date which is
10 not later than 3 years after the end of such quarter.

11 “(2)(A) For purposes of paragraph (1), the term ‘re-
12 striction on divestment’ includes—

13 “(i) any failure to offer a broad range of invest-
14 ment alternatives (as may be determined by the Sec-
15 retary) to which a participant or beneficiary may di-
16 rect the proceeds from the divestment of employer
17 securities, and

18 “(ii) any restriction on the ability of a partici-
19 pant or beneficiary to choose from a broad range of
20 otherwise available investment options (as may be
21 determined by the Secretary) to which such proceeds
22 may be so directed, other than a restriction limiting
23 such ability to so choose to a periodic, reasonable
24 opportunity to so choose occurring no less frequently
25 than on a quarterly basis.”.

1 (2) CLERICAL AMENDMENTS.—The heading for
 2 section 407 of such Act is amended by striking “10
 3 PERCENT” and the item relating to such section in
 4 the table of contents in section 1 of such Act is
 5 amended by striking “10 percent”.

6 (3) TRANSITION RULE.—

7 (A) IN GENERAL.—The amendments made
 8 by this subsection shall apply only with respect
 9 to assets acquired on or after the effective date
 10 of such amendments. In the case of any appli-
 11 cable individual account plan which, on such ef-
 12 fective date, holds assets acquired before such
 13 date on which there is any restriction on divest-
 14 ment by a participant or beneficiary, such plan
 15 shall provide for the removal of all such restric-
 16 tions on the applicable percentage of such as-
 17 sets held on such date.

18 (B) APPLICABLE PERCENTAGE.—For pur-
 19 poses of subparagraph (A), the applicable per-
 20 centage shall be as follows:

Plan years beginning in:	Applicable percentage:
2003	20 percent.
2004	40 percent.
2005	60 percent.
2006	80 percent.
2007 or thereafter	100 percent.

21 (b) AMENDMENTS TO THE INTERNAL REVENUE
 22 CODE OF 1986.—

1 (1) IN GENERAL.—Subsection (a) of section
2 401 of the Internal Revenue Code of 1986 (relating
3 to requirements for qualification) is amended by in-
4 serting after paragraph (34) the following new para-
5 graph:

6 “(35) LIMITATIONS ON RESTRICTIONS UNDER
7 APPLICABLE DEFINED CONTRIBUTION PLANS ON IN-
8 VESTMENTS IN EMPLOYER SECURITIES.—

9 “(A) IN GENERAL.—A trust forming a
10 part of an applicable defined contribution plan
11 shall not constitute a qualified trust under this
12 subsection if the plan acquires or holds any em-
13 ployer securities with respect to which there is
14 any restriction on divestment by a participant
15 or beneficiary on or after the date on which the
16 participant has completed 3 years of participa-
17 tion (as defined in section 411(b)(4)) under the
18 plan or (if the plan so provides) 3 years of serv-
19 ice (as defined in section 411(a)(5)) with the
20 employer.

21 “(B) DEFINITIONS.—For purposes of sub-
22 paragraph (A)—

23 “(i) APPLICABLE DEFINED CONTRIBU-
24 TION PLAN.—The term ‘applicable defined
25 contribution plan’ means any defined con-

1 tribution plan, except that such term does
2 not include an employee stock ownership
3 plan (as defined in section 4975(e)(7)) un-
4 less there are any contributions to such
5 plan (or earnings thereunder) held within
6 such plan that are subject to subsections
7 (k)(3) or (m)(2).

8 “(ii) RESTRICTION ON DIVEST-
9 MENT.—The term ‘restriction on divest-
10 ment’ includes—

11 “(I) any failure to offer at least
12 3 diversified investment options in
13 which a participant or beneficiary may
14 direct the proceeds from the divest-
15 ment of employer securities, and

16 “(II) any restriction on the abil-
17 ity of a participant or beneficiary to
18 choose from all otherwise available in-
19 vestment options in which such pro-
20 ceeds may be so directed.”.

21 (2) CONFORMING AMENDMENT.—Section
22 401(a)(28)(B) of such Code (relating to diversifica-
23 tion of investments) is amended by adding at the
24 end the following new clause:

1 “(v) EXCEPTION.—This subparagraph
2 shall not apply to an applicable defined
3 contribution plan (as defined in paragraph
4 (35)(B)(i)).”.

5 **SEC. 104. PROHIBITED TRANSACTION EXEMPTION FOR THE**
6 **PROVISION OF INVESTMENT ADVICE.**

7 (a) AMENDMENTS TO THE EMPLOYEE RETIREMENT
8 INCOME SECURITY ACT OF 1974.—

9 (1) EXEMPTION FROM PROHIBITED TRANS-
10 ACTIONS.—Section 408(b) of the Employee Retirement
11 Income Security Act of 1974 (29 U.S.C.
12 1108(b)) is amended by adding at the end the fol-
13 lowing new paragraph:

14 “(14)(A) Any transaction described in subpara-
15 graph (B) in connection with the provision of invest-
16 ment advice described in section 3(21)(A)(ii), in any
17 case in which—

18 “(i) the investment of assets of the plan is
19 subject to the direction of plan participants or
20 beneficiaries,

21 “(ii) the advice is provided to the plan or
22 a participant or beneficiary of the plan by a fi-
23 duciary adviser in connection with any sale, ac-
24 quisition, or holding of a security or other prop-

1 erty for purposes of investment of plan assets,
2 and

3 “(iii) the requirements of subsection (g)
4 are met in connection with the provision of the
5 advice.

6 “(B) The transactions described in this sub-
7 paragraph are the following:

8 “(i) the provision of the advice to the plan,
9 participant, or beneficiary;

10 “(ii) the sale, acquisition, or holding of a
11 security or other property (including any lend-
12 ing of money or other extension of credit associ-
13 ated with the sale, acquisition, or holding of a
14 security or other property) pursuant to the ad-
15 vice; and

16 “(iii) the direct or indirect receipt of fees
17 or other compensation by the fiduciary adviser
18 or an affiliate thereof (or any employee, agent,
19 or registered representative of the fiduciary ad-
20 viser or affiliate) in connection with the provi-
21 sion of the advice or in connection with a sale,
22 acquisition, or holding of a security or other
23 property pursuant to the advice.”.

1 (2) REQUIREMENTS.—Section 408 of such Act
2 is amended further by adding at the end the fol-
3 lowing new subsection:

4 “(g) REQUIREMENTS RELATING TO PROVISION OF
5 INVESTMENT ADVICE BY FIDUCIARY ADVISERS.—

6 “(1) IN GENERAL.—The requirements of this
7 subsection are met in connection with the provision
8 of investment advice referred to in section
9 3(21)(A)(ii), provided to an employee benefit plan or
10 a participant or beneficiary of an employee benefit
11 plan by a fiduciary adviser with respect to the plan
12 in connection with any sale, acquisition, or holding
13 of a security or other property for purposes of in-
14 vestment of amounts held by the plan, if—

15 “(A) in the case of the initial provision of
16 the advice with regard to the security or other
17 property by the fiduciary adviser to the plan,
18 participant, or beneficiary, the fiduciary adviser
19 provides to the recipient of the advice, at a time
20 reasonably contemporaneous with the initial
21 provision of the advice, a written notification
22 (which may consist of notification by means of
23 electronic communication)—

24 “(i) of all fees or other compensation
25 relating to the advice that the fiduciary ad-

1 viser or any affiliate thereof is to receive
2 (including compensation provided by any
3 third party) in connection with the provi-
4 sion of the advice or in connection with the
5 sale, acquisition, or holding of the security
6 or other property,

7 “(ii) of any material affiliation or con-
8 tractual relationship of the fiduciary ad-
9 viser or affiliates thereof in the security or
10 other property,

11 “(iii) of any limitation placed on the
12 scope of the investment advice to be pro-
13 vided by the fiduciary adviser with respect
14 to any such sale, acquisition, or holding of
15 a security or other property,

16 “(iv) of the types of services provided
17 by the fiduciary advisor in connection with
18 the provision of investment advice by the
19 fiduciary adviser,

20 “(v) that the adviser is acting as a fi-
21 duciary of the plan in connection with the
22 provision of the advice, and

23 “(vi) that a recipient of the advice
24 may separately arrange for the provision of
25 advice by another adviser, that could have

1 no material affiliation with and receive no
2 fees or other compensation in connection
3 with the security or other property.

4 “(B) the fiduciary adviser provides appro-
5 priate disclosure, in connection with the sale,
6 acquisition, or holding of the security or other
7 property, in accordance with all applicable secu-
8 rities laws,

9 “(C) the sale, acquisition, or holding oc-
10 curs solely at the direction of the recipient of
11 the advice,

12 “(D) the compensation received by the fi-
13 duciary adviser and affiliates thereof in connec-
14 tion with the sale, acquisition, or holding of the
15 security or other property is reasonable, and

16 “(E) the terms of the sale, acquisition, or
17 holding of the security or other property are at
18 least as favorable to the plan as an arm’s
19 length transaction would be.

20 “(2) STANDARDS FOR PRESENTATION OF IN-
21 FORMATION.—

22 “(A) IN GENERAL.—The notification re-
23 quired to be provided to participants and bene-
24 ficiaries under paragraph (1)(A) shall be writ-
25 ten in a clear and conspicuous manner and in

1 a manner calculated to be understood by the av-
2 erage plan participant and shall be sufficiently
3 accurate and comprehensive to reasonably ap-
4 prise such participants and beneficiaries of the
5 information required to be provided in the noti-
6 fication.

7 “(B) MODEL FORM FOR DISCLOSURE OF
8 FEES AND OTHER COMPENSATION.—The Sec-
9 retary shall issue a model form for the disclo-
10 sure of fees and other compensation required in
11 paragraph (1)(A)(i) which meets the require-
12 ments of subparagraph (A).

13 “(3) EXEMPTION CONDITIONED ON CONTINUED
14 AVAILABILITY OF REQUIRED INFORMATION ON RE-
15 QUEST FOR 1 YEAR.—The requirements of para-
16 graph (1)(A) shall be deemed not to have been met
17 in connection with the initial or any subsequent pro-
18 vision of advice described in paragraph (1) to the
19 plan, participant, or beneficiary if, at any time dur-
20 ing the provision of advisory services to the plan,
21 participant, or beneficiary, the fiduciary adviser fails
22 to maintain the information described in clauses (i)
23 through (iv) of subparagraph (A) in currently accu-
24 rate form and in the manner described in paragraph
25 (2) or fails—

1 “(A) to provide, without charge, such cur-
2 rently accurate information to the recipient of
3 the advice no less than annually,

4 “(B) to make such currently accurate in-
5 formation available, upon request and without
6 charge, to the recipient of the advice, or

7 “(C) in the event of a material change to
8 the information described in clauses (i) through
9 (iv) of paragraph (1)(A), to provide, without
10 charge, such currently accurate information to
11 the recipient of the advice at a time reasonably
12 contemporaneous to the material change in in-
13 formation.

14 “(4) MAINTENANCE FOR 6 YEARS OF EVIDENCE
15 OF COMPLIANCE.—A fiduciary adviser referred to in
16 paragraph (1) who has provided advice referred to in
17 such paragraph shall, for a period of not less than
18 6 years after the provision of the advice, maintain
19 any records necessary for determining whether the
20 requirements of the preceding provisions of this sub-
21 section and of subsection (b)(14) have been met. A
22 transaction prohibited under section 406 shall not be
23 considered to have occurred solely because the
24 records are lost or destroyed prior to the end of the

1 6-year period due to circumstances beyond the con-
2 trol of the fiduciary adviser.

3 “(5) EXEMPTION FOR PLAN SPONSOR AND CER-
4 TAIN OTHER FIDUCIARIES.—

5 “(A) IN GENERAL.—Subject to subpara-
6 graph (B), a plan sponsor or other person who
7 is a fiduciary (other than a fiduciary adviser)
8 shall not be treated as failing to meet the re-
9 quirements of this part solely by reason of the
10 provision of investment advice referred to in
11 section 3(21)(A)(ii) (or solely by reason of con-
12 tracting for or otherwise arranging for the pro-
13 vision of the advice), if—

14 “(i) the advice is provided by a fidu-
15 ciary adviser pursuant to an arrangement
16 between the plan sponsor or other fidu-
17 ciary and the fiduciary adviser for the pro-
18 vision by the fiduciary adviser of invest-
19 ment advice referred to in such section,

20 “(ii) the terms of the arrangement re-
21 quire compliance by the fiduciary adviser
22 with the requirements of this subsection,
23 and

24 “(iii) the terms of the arrangement
25 include a written acknowledgment by the

1 fiduciary adviser that the fiduciary adviser
2 is a fiduciary of the plan with respect to
3 the provision of the advice.

4 “(B) CONTINUED DUTY OF PRUDENT SE-
5 LECTION OF ADVISER AND PERIODIC REVIEW.—
6 Nothing in subparagraph (A) shall be construed
7 to exempt a plan sponsor or other person who
8 is a fiduciary from any requirement of this part
9 for the prudent selection and periodic review of
10 a fiduciary adviser with whom the plan sponsor
11 or other person enters into an arrangement for
12 the provision of advice referred to in section
13 3(21)(A)(ii). The plan sponsor or other person
14 who is a fiduciary has no duty under this part
15 to monitor the specific investment advice given
16 by the fiduciary adviser to any particular recipi-
17 ent of the advice.

18 “(C) AVAILABILITY OF PLAN ASSETS FOR
19 PAYMENT FOR ADVICE.—Nothing in this part
20 shall be construed to preclude the use of plan
21 assets to pay for reasonable expenses in pro-
22 viding investment advice referred to in section
23 3(21)(A)(ii).

24 “(6) DEFINITIONS.—For purposes of this sub-
25 section and subsection (b)(14)—

1 “(A) FIDUCIARY ADVISER.—The term ‘fi-
2 duciary adviser’ means, with respect to a plan,
3 a person who is a fiduciary of the plan by rea-
4 son of the provision of investment advice by the
5 person to the plan or to a participant or bene-
6 ficiary and who is—

7 “(i) registered as an investment ad-
8 viser under the Investment Advisers Act of
9 1940 (15 U.S.C. 80b–1 et seq.) or under
10 the laws of the State in which the fiduciary
11 maintains its principal office and place of
12 business,

13 “(ii) a bank or similar financial insti-
14 tution referred to in section 408(b)(4), but
15 only if the advice is provided through a
16 trust department of the bank or similar fi-
17 nancial institution which is subject to peri-
18 odic examination and review by Federal or
19 State banking authorities,

20 “(iii) an insurance company qualified
21 to do business under the laws of a State,

22 “(iv) a person registered as a broker
23 or dealer under the Securities Exchange
24 Act of 1934 (15 U.S.C. 78a et seq.),

1 “(v) an affiliate of a person described
2 in any of clauses (i) through (iv), or

3 “(vi) an employee, agent, or registered
4 representative of a person described in any
5 of clauses (i) through (v) who satisfies the
6 requirements of applicable insurance,
7 banking, and securities laws relating to the
8 provision of the advice.

9 “(B) AFFILIATE.—The term ‘affiliate’ of
10 another entity means an affiliated person of the
11 entity (as defined in section 2(a)(3) of the In-
12 vestment Company Act of 1940 (15 U.S.C.
13 80a–2(a)(3))).

14 “(C) REGISTERED REPRESENTATIVE.—
15 The term ‘registered representative’ of another
16 entity means a person described in section
17 3(a)(18) of the Securities Exchange Act of
18 1934 (15 U.S.C. 78c(a)(18)) (substituting the
19 entity for the broker or dealer referred to in
20 such section) or a person described in section
21 202(a)(17) of the Investment Advisers Act of
22 1940 (15 U.S.C. 80b–2(a)(17)) (substituting
23 the entity for the investment adviser referred to
24 in such section).”.

1 (b) AMENDMENTS TO THE INTERNAL REVENUE
2 CODE OF 1986.—

3 (1) EXEMPTION FROM PROHIBITED TRANS-
4 ACTIONS.—Subsection (d) of section 4975 of the In-
5 ternal Revenue Code of 1986 (relating to exemptions
6 from tax on prohibited transactions) is amended—

7 (A) in paragraph (14), by striking “or” at
8 the end;

9 (B) in paragraph (15), by striking the pe-
10 riod at the end and inserting “; or”; and

11 (C) by adding at the end the following new
12 paragraph:

13 “(16) any transaction described in subsection
14 (f)(7)(A) in connection with the provision of invest-
15 ment advice described in subsection (e)(3)(B), in
16 any case in which—

17 “(A) the investment of assets of the plan
18 is subject to the direction of plan participants
19 or beneficiaries,

20 “(B) the advice is provided to the plan or
21 a participant or beneficiary of the plan by a fi-
22 duciary adviser in connection with any sale, ac-
23 quisition, or holding of a security or other prop-
24 erty for purposes of investment of plan assets,
25 and

1 “(C) the requirements of subsection
2 (f)(7)(B) are met in connection with the provi-
3 sion of the advice.”.

4 (2) ALLOWED TRANSACTIONS AND REQUIRE-
5 MENTS.—Subsection (f) of such section 4975 (relat-
6 ing to other definitions and special rules) is amended
7 by adding at the end the following new paragraph:

8 “(7) PROVISIONS RELATING TO INVESTMENT
9 ADVICE PROVIDED BY FIDUCIARY ADVISERS.—

10 “(A) TRANSACTIONS ALLOWABLE IN CON-
11 NECTION WITH INVESTMENT ADVICE PROVIDED
12 BY FIDUCIARY ADVISERS.—The transactions re-
13 ferred to in subsection (d)(16), in connection
14 with the provision of investment advice by a fi-
15 duciary adviser, are the following:

16 “(i) the provision of the advice to the
17 plan, participant, or beneficiary;

18 “(ii) the sale, acquisition, or holding
19 of a security or other property (including
20 any lending of money or other extension of
21 credit associated with the sale, acquisition,
22 or holding of a security or other property)
23 pursuant to the advice; and

24 “(iii) the direct or indirect receipt of
25 fees or other compensation by the fiduciary

1 adviser or an affiliate thereof (or any em-
2 ployee, agent, or registered representative
3 of the fiduciary adviser or affiliate) in con-
4 nection with the provision of the advice or
5 in connection with a sale, acquisition, or
6 holding of a security or other property pur-
7 suant to the advice.

8 “(B) REQUIREMENTS RELATING TO PROVI-
9 SION OF INVESTMENT ADVICE BY FIDUCIARY
10 ADVISERS.—The requirements of this subpara-
11 graph (referred to in subsection (d)(16)(C)) are
12 met in connection with the provision of invest-
13 ment advice referred to in subsection (e)(3)(B),
14 provided to a plan or a participant or bene-
15 ficiary of a plan by a fiduciary adviser with re-
16 spect to the plan in connection with any sale,
17 acquisition, or holding of a security or other
18 property for purposes of investment of amounts
19 held by the plan, if—

20 “(i) in the case of the initial provision
21 of the advice with regard to the security or
22 other property by the fiduciary adviser to
23 the plan, participant, or beneficiary, the fi-
24 duciary adviser provides to the recipient of
25 the advice, at a time reasonably contem-

1 poraneous with the initial provision of the
2 advice, a written notification (which may
3 consist of notification by means of elec-
4 tronic communication)—

5 “(I) of all fees or other com-
6 pensation relating to the advice that
7 the fiduciary adviser or any affiliate
8 thereof is to receive (including com-
9 pensation provided by any third
10 party) in connection with the provi-
11 sion of the advice or in connection
12 with the sale, acquisition, or holding
13 of the security or other property,

14 “(II) of any material affiliation
15 or contractual relationship of the fidu-
16 ciary adviser or affiliates thereof in
17 the security or other property,

18 “(III) of any limitation placed on
19 the scope of the investment advice to
20 be provided by the fiduciary adviser
21 with respect to any such sale, acquisi-
22 tion, or holding of a security or other
23 property,

24 “(IV) of the types of services
25 provided by the fiduciary advisor in

1 connection with the provision of in-
2 vestment advice by the fiduciary ad-
3 viser, and

4 “(V) that the adviser is acting as
5 a fiduciary of the plan in connection
6 with the provision of the advice,

7 “(ii) the fiduciary adviser provides ap-
8 propriate disclosure, in connection with the
9 sale, acquisition, or holding of the security
10 or other property, in accordance with all
11 applicable securities laws,

12 “(iii) the sale, acquisition, or holding
13 occurs solely at the direction of the recipi-
14 ent of the advice,

15 “(iv) the compensation received by the
16 fiduciary adviser and affiliates thereof in
17 connection with the sale, acquisition, or
18 holding of the security or other property is
19 reasonable, and

20 “(v) the terms of the sale, acquisition,
21 or holding of the security or other property
22 are at least as favorable to the plan as an
23 arm’s length transaction would be.

24 “(C) STANDARDS FOR PRESENTATION OF
25 INFORMATION.—The notification required to be

1 provided to participants and beneficiaries under
2 subparagraph (B)(i) shall be written in a clear
3 and conspicuous manner and in a manner cal-
4 culated to be understood by the average plan
5 participant and shall be sufficiently accurate
6 and comprehensive to reasonably apprise such
7 participants and beneficiaries of the information
8 required to be provided in the notification.

9 “(D) EXEMPTION CONDITIONED ON MAK-
10 ING REQUIRED INFORMATION AVAILABLE ANNU-
11 ALLY, ON REQUEST, AND IN THE EVENT OF MA-
12 TERIAL CHANGE.—The requirements of sub-
13 paragraph (B)(i) shall be deemed not to have
14 been met in connection with the initial or any
15 subsequent provision of advice described in sub-
16 paragraph (B) to the plan, participant, or bene-
17 ficiary if, at any time during the provision of
18 advisory services to the plan, participant, or
19 beneficiary, the fiduciary adviser fails to main-
20 tain the information described in subclauses (I)
21 through (IV) of subparagraph (B)(i) in cur-
22 rently accurate form and in the manner re-
23 quired by subparagraph (C), or fails—

1 “(i) to provide, without charge, such
2 currently accurate information to the re-
3 cipient of the advice no less than annually,

4 “(ii) to make such currently accurate
5 information available, upon request and
6 without charge, to the recipient of the ad-
7 vice, or

8 “(iii) in the event of a material
9 change to the information described in
10 subclauses (I) through (IV) of subpara-
11 graph (B)(i), to provide, without charge,
12 such currently accurate information to the
13 recipient of the advice at a time reasonably
14 contemporaneous to the material change in
15 information.

16 “(E) MAINTENANCE FOR 6 YEARS OF EVI-
17 DENCE OF COMPLIANCE.—A fiduciary adviser
18 referred to in subparagraph (B) who has pro-
19 vided advice referred to in such subparagraph
20 shall, for a period of not less than 6 years after
21 the provision of the advice, maintain any
22 records necessary for determining whether the
23 requirements of the preceding provisions of this
24 paragraph and of subsection (d)(16) have been
25 met. A transaction prohibited under subsection

1 (c)(1) shall not be considered to have occurred
2 solely because the records are lost or destroyed
3 prior to the end of the 6-year period due to cir-
4 cumstances beyond the control of the fiduciary
5 adviser.

6 “(F) EXEMPTION FOR PLAN SPONSOR AND
7 CERTAIN OTHER FIDUCIARIES.—A plan sponsor
8 or other person who is a fiduciary (other than
9 a fiduciary adviser) shall not be treated as fail-
10 ing to meet the requirements of this section
11 solely by reason of the provision of investment
12 advice referred to in subsection (e)(3)(B) (or
13 solely by reason of contracting for or otherwise
14 arranging for the provision of the advice), if—

15 “(i) the advice is provided by a fidu-
16 ciary adviser pursuant to an arrangement
17 between the plan sponsor or other fidu-
18 ciary and the fiduciary adviser for the pro-
19 vision by the fiduciary adviser of invest-
20 ment advice referred to in such section,

21 “(ii) the terms of the arrangement re-
22 quire compliance by the fiduciary adviser
23 with the requirements of this paragraph,

24 “(iii) the terms of the arrangement
25 include a written acknowledgment by the

1 fiduciary adviser that the fiduciary adviser
2 is a fiduciary of the plan with respect to
3 the provision of the advice, and

4 “(iv) the requirements of part 4 of
5 subtitle B of title I of the Employee Re-
6 tirement Income Security Act of 1974 are
7 met in connection with the provision of
8 such advice.

9 “(G) DEFINITIONS.—For purposes of this
10 paragraph and subsection (d)(16)—

11 “(i) FIDUCIARY ADVISER.—The term
12 ‘fiduciary adviser’ means, with respect to a
13 plan, a person who is a fiduciary of the
14 plan by reason of the provision of invest-
15 ment advice by the person to the plan or
16 to a participant or beneficiary and who
17 is—

18 “(I) registered as an investment
19 adviser under the Investment Advisers
20 Act of 1940 (15 U.S.C. 80b–1 et seq.)
21 or under the laws of the State in
22 which the fiduciary maintains its prin-
23 cipal office and place of business,

1 “(II) a bank or similar financial
2 institution referred to in subsection
3 (d)(4),

4 “(III) an insurance company
5 qualified to do business under the
6 laws of a State,

7 “(IV) a person registered as a
8 broker or dealer under the Securities
9 Exchange Act of 1934 (15 U.S.C. 78a
10 et seq.),

11 “(V) an affiliate of a person de-
12 scribed in any of subclauses (I)
13 through (IV), or

14 “(VI) an employee, agent, or reg-
15 istered representative of a person de-
16 scribed in any of subclauses (I)
17 through (V) who satisfies the require-
18 ments of applicable insurance, bank-
19 ing, and securities laws relating to the
20 provision of the advice.

21 “(ii) AFFILIATE.—The term ‘affiliate’
22 of another entity means an affiliated per-
23 son of the entity (as defined in section
24 2(a)(3) of the Investment Company Act of
25 1940 (15 U.S.C. 80a-2(a)(3))).

1 “(iii) REGISTERED REPRESENTA-
2 TIVE.—The term ‘registered representa-
3 tive’ of another entity means a person de-
4 scribed in section 3(a)(18) of the Securi-
5 ties Exchange Act of 1934 (15 U.S.C.
6 78c(a)(18)) (substituting the entity for the
7 broker or dealer referred to in such sec-
8 tion) or a person described in section
9 202(a)(17) of the Investment Advisers Act
10 of 1940 (15 U.S.C. 80b-2(a)(17)) (sub-
11 stituting the entity for the investment ad-
12 viser referred to in such section).”.

13 **SEC. 105. INSIDER TRADES DURING PENSION PLAN SUS-**
14 **PENSION PERIODS PROHIBITED.**

15 Section 16 of the Securities Exchange Act of 1934
16 (15 U.S.C. 78p) is amended by adding at the end the fol-
17 lowing new subsection:

18 “(h) INSIDER TRADES DURING PENSION PLAN SUS-
19 PENSION PERIODS PROHIBITED.—

20 “(1) PROHIBITION.—It shall be unlawful for
21 any such beneficial owner, director, or officer of an
22 issuer, directly or indirectly, to purchase (or other-
23 wise acquire) or sell (or otherwise transfer) any eq-
24 uity security of such issuer (other than an exempted

1 security), during any pension plan suspension period
2 with respect to such equity security.

3 “(2) REMEDY.—Any profit realized by such
4 beneficial owner, director, or officer from any pur-
5 chase (or other acquisition) or sale (or other trans-
6 fer) in violation of this subsection shall inure to and
7 be recoverable by the issuer irrespective of any in-
8 tention on the part of such beneficial owner, direc-
9 tor, or officer in entering into the transaction.

10 “(3) RULEMAKING PERMITTED.—The Commis-
11 sion may issue rules to clarify the application of this
12 subsection, to ensure adequate notice to all persons
13 affected by this subsection, and to prevent evasion
14 thereof.

15 “(4) DEFINITIONS.—For purposes of this
16 subsection—

17 “(A) PENSION PLAN SUSPENSION PE-
18 RIOD.—The term ‘pension plan suspension pe-
19 riod’ means, with respect to an equity security,
20 any period during which the ability of a partici-
21 pant or beneficiary under an applicable indi-
22 vidual account plan maintained by the issuer to
23 direct the investment of assets in his or her in-
24 dividual account away from such equity security
25 is suspended by the issuer or a fiduciary of the

1 plan. Such term does not include any limitation
2 or restriction that may govern the frequency of
3 transfers between investment vehicles to the ex-
4 tent such limitation and restriction is disclosed
5 to participants and beneficiaries through the
6 summary plan description or materials describ-
7 ing specific investment alternatives under the
8 plan.

9 “(B) APPLICABLE INDIVIDUAL ACCOUNT
10 PLAN.—The term ‘applicable individual account
11 plan’ has the meaning provided such term in
12 section 3(42) of the Employee Retirement In-
13 come Security Act of 1974.”.

14 **SEC. 106. EFFECTIVE DATES OF TITLE AND RELATED**
15 **RULES.**

16 (a) IN GENERAL.—Except as provided in subsection
17 (b), the amendments made by sections 101, 102, 103, and
18 105 shall apply with respect to plan years beginning on
19 or after January 1, 2003.

20 (b) SPECIAL RULE FOR COLLECTIVELY BARGAINED
21 PLANS.—In the case of a plan maintained pursuant to 1
22 or more collective bargaining agreements between em-
23 ployee representatives and 1 or more employers ratified
24 on or before the date of the enactment of this Act, sub-
25 section (a) shall be applied to benefits pursuant to, and

1 individuals covered by, any such agreement by substituting
2 for “January 1, 2003” the date of the commencement of
3 the first plan year beginning on or after the earlier of—

4 (1) the later of—

5 (A) January 1, 2004, or

6 (B) the date on which the last of such col-
7 lective bargaining agreements terminates (de-
8 termined without regard to any extension there-
9 of after the date of the enactment of this Act),

10 or

11 (2) January 1, 2005.

12 (c) PLAN AMENDMENTS.—If the amendments made
13 by sections 101, 102, and 103 of this Act require an
14 amendment to any plan, such plan amendment shall not
15 be required to be made before the first plan year beginning
16 on or after January 1, 2005, if—

17 (1) during the period after such amendments
18 made by such sections take effect and before such
19 first plan year, the plan is operated in accordance
20 with the requirements of such amendments made by
21 such sections, and

22 (2) such plan amendment applies retroactively
23 to the period after such amendments made by such
24 sections take effect and before such first plan year.

1 (d) AMENDMENTS RELATING TO INVESTMENT AD-
2 VICE.—The amendments made by section 104 shall apply
3 with respect to advice referred to in section 3(21)(A)(ii)
4 of the Employee Retirement Income Security Act of 1974
5 or section 4975(c)(3)(B) of the Internal Revenue Code of
6 1986 provided on or after January 1, 2003.

7 **TITLE II—ADDITIONAL**
8 **PROVISIONS**

9 **SEC. 201. AMENDMENTS TO RETIREMENT PROTECTION ACT**
10 **OF 1994.**

11 (a) TRANSITION RULE MADE PERMANENT.—Para-
12 graph (1) of section 769(c) of the Retirement Protection
13 Act of 1994 is amended—

14 (1) by striking “transition” each place it ap-
15 pears in the heading and the text, and

16 (2) by striking “for any plan year beginning
17 after 1996 and before 2010”.

18 (b) SPECIAL RULES.—Paragraph (2) of section
19 769(c) of the Retirement Protection Act of 1994 is amend-
20 ed to read as follows:

21 “(2) SPECIAL RULES.—The rules described in
22 this paragraph are as follows:

23 “(A) For purposes of section 302(d)(9)(A)
24 of the Employee Retirement Income Security
25 Act of 1974, the funded current liability per-

1 (B) MODIFICATION OF REGULATIONS.—

2 The Secretary of the Treasury shall modify the
3 regulations under part 2 of subtitle B of title
4 I of the Employee Retirement Income Security
5 Act of 1974 to the extent that they relate to
6 sections 203(e) and 205 of such Act to sub-
7 stitute “180 days” for “90 days” each place it
8 appears.

9 (2) EFFECTIVE DATE.—The amendment made
10 by paragraph (1)(A) and the modification required
11 by paragraph (1)(B) shall apply to years beginning
12 after December 31, 2002.

13 (b) CONSENT REGULATION INAPPLICABLE TO CER-
14 TAIN DISTRIBUTIONS.—

15 (1) IN GENERAL.—The Secretary of the Treas-
16 ury shall modify the regulations under section 205
17 of the Employee Retirement Income Security Act of
18 1974 to provide that the description of a partici-
19 pant’s right, if any, to defer receipt of a distribution
20 shall also describe the consequences of failing to
21 defer such receipt.

22 (2) EFFECTIVE DATE.—

23 (A) IN GENERAL.—The modifications re-
24 quired by paragraph (1) shall apply to years be-
25 ginning after December 31, 2002.

1 (B) REASONABLE NOTICE.—In the case of
2 any description of such consequences made be-
3 fore the date that is 90 days after the date on
4 which the Secretary of the Treasury issues a
5 safe harbor description under paragraph (1), a
6 plan shall not be treated as failing to satisfy the
7 requirements of section 205 of such Act by rea-
8 son of the failure to provide the information re-
9 quired by the modifications made under para-
10 graph (1) if the Administrator of such plan
11 makes a reasonable attempt to comply with
12 such requirements.

13 **SEC. 203. ANNUAL REPORT DISSEMINATION.**

14 (a) REPORT AVAILABLE THROUGH ELECTRONIC
15 MEANS.—Section 104(b)(3) of the Employee Retirement
16 Income Security Act of 1974 (29 U.S.C. 1024(b)(3)) is
17 amended by adding at the end the following new sentence:
18 “The requirement to furnish information under the pre-
19 vious sentence with respect to an employee pension benefit
20 plan shall be satisfied if the administrator makes such in-
21 formation reasonably available through electronic means
22 or other new technology.”.

23 (b) EFFECTIVE DATE.—The amendment made by
24 this section shall apply to reports for years beginning after
25 December 31, 2002.

1 **SEC. 204. TECHNICAL CORRECTIONS TO SAVER ACT.**

2 Section 517 of the Employee Retirement Income Se-
3 curity Act of 1974 (29 U.S.C. 1147) is amended—

4 (1) in subsection (a), by striking “2001 and
5 2005 on or after September 1 of each year involved”
6 and inserting “2002, 2006, and 2010”;

7 (2) in subsection (b), by adding at the end the
8 following new sentence: “To effectuate the purposes
9 of this paragraph, the Secretary may enter into a co-
10 operative agreement, pursuant to the Federal Grant
11 and Cooperative Agreement Act of 1977 (31 U.S.C.
12 6301 et seq.), with any appropriate, qualified enti-
13 ty.”;

14 (3) in subsection (e)(2)—

15 (A) by striking “Committee on Labor and
16 Human Resources” in subparagraph (D) and
17 inserting “Committee on Health, Education,
18 Labor, and Pensions”;

19 (B) by striking subparagraph (F) and in-
20 serting the following:

21 “(F) the Chairman and Ranking Member
22 of the Subcommittee on Labor, Health and
23 Human Services, and Education of the Com-
24 mittee on Appropriations of the House of Rep-
25 resentatives and the Chairman and Ranking
26 Member of the Subcommittee on Labor, Health

1 and Human Services, and Education of the
2 Committee on Appropriations of the Senate;”;

3 (C) by redesignating subparagraph (G) as
4 subparagraph (J); and

5 (D) by inserting after subparagraph (F)
6 the following new subparagraphs:

7 “(G) the Chairman and Ranking Member
8 of the Committee on Finance of the Senate;

9 “(H) the Chairman and Ranking Member
10 of the Committee on Ways and Means of the
11 House of Representatives;

12 “(I) the Chairman and Ranking Member
13 of the Subcommittee on Employer-Employee
14 Relations of the Committee on Education and
15 the Workforce of the House of Representatives;
16 and”;

17 (4) in subsection (e)(3)—

18 (A) by striking “There shall be not more
19 than 200 additional participants.” in subpara-
20 graph (A) and inserting “The participants in
21 the National Summit shall also include addi-
22 tional participants appointed under this sub-
23 paragraph.”;

24 (B) by striking “one-half shall be ap-
25 pointed by the President,” in subparagraph

1 (A)(i) and inserting “not more than 100 par-
2 ticipants shall be appointed under this clause by
3 the President,”;

4 (C) by striking “one-half shall be ap-
5 pointed by the elected leaders of Congress” in
6 subparagraph (A)(ii) and inserting “not more
7 than 100 participants shall be appointed under
8 this clause by the elected leaders of Congress”;

9 (D) by redesignating subparagraph (B) as
10 subparagraph (C); and

11 (E) by inserting after subparagraph (A)
12 the following new subparagraph:

13 “(B) PRESIDENTIAL AUTHORITY FOR AD-
14 DITIONAL APPOINTMENTS.—The President, in
15 consultation with the elected leaders of Con-
16 gress referred to in subsection (a), may appoint
17 under this subparagraph additional participants
18 to the National Summit. The number of such
19 additional participants appointed under this
20 subparagraph may not exceed the lesser of 3
21 percent of the total number of all additional
22 participants appointed under this paragraph, or
23 10. Such additional participants shall be ap-
24 pointed from persons nominated by the organi-
25 zation referred to in subsection (b)(2) which is

1 made up of private sector businesses and asso-
2 ciations partnered with Government entities to
3 promote long term financial security in retire-
4 ment through savings and with which the Sec-
5 retary is required thereunder to consult and co-
6 operate and shall not be Federal, State, or local
7 government employees.”;

8 (5) in subsection (e)(3)(C) (as redesignated), by
9 striking “January 31, 1998” and inserting “3
10 months before the convening of each summit;”

11 (6) in subsection (f)(1)(C), by inserting “, no
12 later than 90 days prior to the date of the com-
13 mencement of the National Summit,” after “com-
14 ment”;

15 (7) in subsection (g), by inserting “, in con-
16 sultation with the congressional leaders specified in
17 subsection (e)(2),” after “report” the first place it
18 appears;

19 (8) in subsection (i)—

20 (A) by striking “for fiscal years beginning
21 on or after October 1, 1997,”; and

22 (B) by adding at the end the following new
23 paragraph:

24 “(3) RECEPTION AND REPRESENTATION AU-
25 THORITY.—The Secretary is hereby granted recep-

1 tion and representation authority limited specifically
2 to the events at the National Summit. The Secretary
3 shall use any private contributions accepted in con-
4 nection with the National Summit prior to using
5 funds appropriated for purposes of the National
6 Summit pursuant to this paragraph.”; and

7 (9) in subsection (k)—

8 (A) by striking “shall enter into a contract
9 on a sole-source basis” and inserting “may
10 enter into a contract on a sole-source basis”;
11 and

12 (B) by striking “in fiscal year 1998”.

13 **SEC. 205. MISSING PARTICIPANTS.**

14 (a) IN GENERAL.—Section 4050 of the Employee Re-
15 tirement Income Security Act of 1974 (29 U.S.C. 1350)
16 is amended by redesignating subsection (c) as subsection
17 (e) and by inserting after subsection (b) the following new
18 subsections:

19 “(c) MULTIEMPLOYER PLANS.—The corporation
20 shall prescribe rules similar to the rules in subsection (a)
21 for multiemployer plans covered by this title that termi-
22 nate under section 4041A.

23 “(d) PLANS NOT OTHERWISE SUBJECT TO TITLE.—

24 “(1) TRANSFER TO CORPORATION.—The plan
25 administrator of a plan described in paragraph (4)

1 may elect to transfer a missing participant's benefits
2 to the corporation upon termination of the plan.

3 “(2) INFORMATION TO THE CORPORATION.—To
4 the extent provided in regulations, the plan adminis-
5 trator of a plan described in paragraph (4) shall,
6 upon termination of the plan, provide the corpora-
7 tion information with respect to benefits of a miss-
8 ing participant if the plan transfers such benefits—

9 “(A) to the corporation, or

10 “(B) to an entity other than the corpora-
11 tion or a plan described in paragraph (4)(B)(ii).

12 “(3) PAYMENT BY THE CORPORATION.—If ben-
13 efits of a missing participant were transferred to the
14 corporation under paragraph (1), the corporation
15 shall, upon location of the participant or beneficiary,
16 pay to the participant or beneficiary the amount
17 transferred (or the appropriate survivor benefit)
18 either—

19 “(A) in a single sum (plus interest), or

20 “(B) in such other form as is specified in
21 regulations of the corporation.

22 “(4) PLANS DESCRIBED.—A plan is described
23 in this paragraph if—

24 “(A) the plan is a pension plan (within the
25 meaning of section 3(2))—

1 “(i) to which the provisions of this
2 section do not apply (without regard to
3 this subsection), and

4 “(ii) which is not a plan described in
5 paragraphs (2) through (11) of section
6 4021(b), and

7 “(B) at the time the assets are to be dis-
8 tributed upon termination, the plan—

9 “(i) has missing participants, and

10 “(ii) has not provided for the transfer
11 of assets to pay the benefits of all missing
12 participants to another pension plan (with-
13 in the meaning of section 3(2)).

14 “(5) CERTAIN PROVISIONS NOT TO APPLY.—
15 Subsections (a)(1) and (a)(3) shall not apply to a
16 plan described in paragraph (4).”.

17 (b) CONFORMING AMENDMENTS.—Section 206(f) of
18 such Act (29 U.S.C. 1056(f)) is amended—

19 (1) by striking “title IV” and inserting “section
20 4050”; and

21 (2) by striking “the plan shall provide that,”.

22 (c) EFFECTIVE DATE.—The amendment made by
23 this section shall apply to distributions made after final
24 regulations implementing subsections (c) and (d) of sec-
25 tion 4050 of the Employee Retirement Income Security

1 Act of 1974 (as added by subsection (a)), respectively, are
2 prescribed.

3 **SEC. 206. REDUCED PBGC PREMIUM FOR NEW PLANS OF**
4 **SMALL EMPLOYERS.**

5 (a) IN GENERAL.—Subparagraph (A) of section
6 4006(a)(3) of the Employee Retirement Income Security
7 Act of 1974 (29 U.S.C. 1306(a)(3)(A)) is amended—

8 (1) in clause (i), by inserting “other than a new
9 single-employer plan (as defined in subparagraph
10 (F)) maintained by a small employer (as so de-
11 fined),” after “single-employer plan,”

12 (2) in clause (iii), by striking the period at the
13 end and inserting “, and”, and

14 (3) by adding at the end the following new
15 clause:

16 “(iv) in the case of a new single-employer plan
17 (as defined in subparagraph (F)) maintained by a
18 small employer (as so defined) for the plan year, \$5
19 for each individual who is a participant in such plan
20 during the plan year.”.

21 (b) DEFINITION OF NEW SINGLE-EMPLOYER
22 PLAN.—Section 4006(a)(3) of the Employee Retirement
23 Income Security Act of 1974 (29 U.S.C. 1306(a)(3)) is
24 amended by adding at the end the following new subpara-
25 graph:

1 “(F)(i) For purposes of this paragraph, a single-em-
2 ployer plan maintained by a contributing sponsor shall be
3 treated as a new single-employer plan for each of its first
4 5 plan years if, during the 36-month period ending on the
5 date of the adoption of such plan, the sponsor or any
6 member of such sponsor’s controlled group (or any prede-
7 cessor of either) did not establish or maintain a plan to
8 which this title applies with respect to which benefits were
9 accrued for substantially the same employees as are in the
10 new single-employer plan.

11 “(ii)(I) For purposes of this paragraph, the term
12 ‘small employer’ means an employer which on the first day
13 of any plan year has, in aggregation with all members of
14 the controlled group of such employer, 100 or fewer em-
15 ployees.

16 “(II) In the case of a plan maintained by two or more
17 contributing sponsors that are not part of the same con-
18 trolled group, the employees of all contributing sponsors
19 and controlled groups of such sponsors shall be aggregated
20 for purposes of determining whether any contributing
21 sponsor is a small employer.”.

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to plans established after Decem-
24 ber 31, 2001.

1 **SEC. 207. REDUCTION OF ADDITIONAL PBGC PREMIUM FOR**
2 **NEW AND SMALL PLANS.**

3 (a) NEW PLANS.—Subparagraph (E) of section
4 4006(a)(3) of the Employee Retirement Income Security
5 Act of 1974 (29 U.S.C. 1306(a)(3)(E)) is amended by
6 adding at the end the following new clause:

7 “(v) In the case of a new defined benefit plan, the
8 amount determined under clause (ii) for any plan year
9 shall be an amount equal to the product of the amount
10 determined under clause (ii) and the applicable percent-
11 age. For purposes of this clause, the term ‘applicable per-
12 centage’ means—

13 “(I) 0 percent, for the first plan year.

14 “(II) 20 percent, for the second plan year.

15 “(III) 40 percent, for the third plan year.

16 “(IV) 60 percent, for the fourth plan year.

17 “(V) 80 percent, for the fifth plan year.

18 For purposes of this clause, a defined benefit plan (as de-
19 fined in section 3(35)) maintained by a contributing spon-
20 sor shall be treated as a new defined benefit plan for each
21 of its first 5 plan years if, during the 36-month period
22 ending on the date of the adoption of the plan, the sponsor
23 and each member of any controlled group including the
24 sponsor (or any predecessor of either) did not establish
25 or maintain a plan to which this title applies with respect

1 to which benefits were accrued for substantially the same
2 employees as are in the new plan.”.

3 (b) SMALL PLANS.—Paragraph (3) of section
4 4006(a) of the Employee Retirement Income Security Act
5 of 1974 (29 U.S.C. 1306(a)), as amended by section
6 702(b), is amended—

7 (1) by striking “The” in subparagraph (E)(i)
8 and inserting “Except as provided in subparagraph
9 (G), the”, and

10 (2) by inserting after subparagraph (F) the fol-
11 lowing new subparagraph:

12 “(G)(i) In the case of an employer who has 25 or
13 fewer employees on the first day of the plan year, the addi-
14 tional premium determined under subparagraph (E) for
15 each participant shall not exceed \$5 multiplied by the
16 number of participants in the plan as of the close of the
17 preceding plan year.

18 “(ii) For purposes of clause (i), whether an employer
19 has 25 or fewer employees on the first day of the plan
20 year is determined taking into consideration all of the em-
21 ployees of all members of the contributing sponsor’s con-
22 trolled group. In the case of a plan maintained by two
23 or more contributing sponsors, the employees of all con-
24 tributing sponsors and their controlled groups shall be ag-

1 gregated for purposes of determining whether the 25-or-
2 fewer-employees limitation has been satisfied.”.

3 (c) EFFECTIVE DATES.—

4 (1) SUBSECTION (a).—The amendments made
5 by subsection (a) shall apply to plans established
6 after December 31, 2001.

7 (2) SUBSECTION (b).—The amendments made
8 by subsection (b) shall apply to plan years beginning
9 after December 31, 2002.

10 **SEC. 208. AUTHORIZATION FOR PBGC TO PAY INTEREST ON**
11 **PREMIUM OVERPAYMENT REFUNDS.**

12 (a) IN GENERAL.—Section 4007(b) of the Employ-
13 ment Retirement Income Security Act of 1974 (29 U.S.C.
14 1307(b)) is amended—

15 (1) by striking “(b)” and inserting “(b)(1)”,
16 and

17 (2) by inserting at the end the following new
18 paragraph:

19 “(2) The corporation is authorized to pay, subject to
20 regulations prescribed by the corporation, interest on the
21 amount of any overpayment of premium refunded to a des-
22 ignated payor. Interest under this paragraph shall be cal-
23 culated at the same rate and in the same manner as inter-
24 est is calculated for underpayments under paragraph
25 (1).”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall apply to interest accruing for periods
3 beginning not earlier than the date of the enactment of
4 this Act.

5 **SEC. 209. SUBSTANTIAL OWNER BENEFITS IN TERMINATED**
6 **PLANS.**

7 (a) MODIFICATION OF PHASE-IN OF GUARANTEE.—
8 Section 4022(b)(5) of the Employee Retirement Income
9 Security Act of 1974 (29 U.S.C. 1322(b)(5)) is amended
10 to read as follows:

11 “(5)(A) For purposes of this paragraph, the term
12 ‘majority owner’ means an individual who, at any time
13 during the 60-month period ending on the date the deter-
14 mination is being made—

15 “(i) owns the entire interest in an unincor-
16 porated trade or business,

17 “(ii) in the case of a partnership, is a partner
18 who owns, directly or indirectly, 50 percent or more
19 of either the capital interest or the profits interest
20 in such partnership, or

21 “(iii) in the case of a corporation, owns, directly
22 or indirectly, 50 percent or more in value of either
23 the voting stock of that corporation or all the stock
24 of that corporation.

1 For purposes of clause (iii), the constructive ownership
2 rules of section 1563(e) of the Internal Revenue Code of
3 1986 shall apply (determined without regard to section
4 1563(e)(3)(C)).

5 “(B) In the case of a participant who is a majority
6 owner, the amount of benefits guaranteed under this sec-
7 tion shall equal the product of—

8 “(i) a fraction (not to exceed 1) the numerator
9 of which is the number of years from the later of the
10 effective date or the adoption date of the plan to the
11 termination date, and the denominator of which is
12 10, and

13 “(ii) the amount of benefits that would be guar-
14 anteed under this section if the participant were not
15 a majority owner.”.

16 (b) MODIFICATION OF ALLOCATION OF ASSETS.—

17 (1) Section 4044(a)(4)(B) of the Employee Re-
18 tirement Income Security Act of 1974 (29 U.S.C.
19 1344(a)(4)(B)) is amended by striking “section
20 4022(b)(5)” and inserting “section 4022(b)(5)(B)”.

21 (2) Section 4044(b) of such Act (29 U.S.C.
22 1344(b)) is amended—

23 (A) by striking “(5)” in paragraph (2) and
24 inserting “(4), (5),” and

1 (B) by redesignating paragraphs (3)
2 through (6) as paragraphs (4) through (7), re-
3 spectively, and by inserting after paragraph (2)
4 the following new paragraph:

5 “(3) If assets available for allocation under
6 paragraph (4) of subsection (a) are insufficient to
7 satisfy in full the benefits of all individuals who are
8 described in that paragraph, the assets shall be allo-
9 cated first to benefits described in subparagraph (A)
10 of that paragraph. Any remaining assets shall then
11 be allocated to benefits described in subparagraph
12 (B) of that paragraph. If assets allocated to such
13 subparagraph (B) are insufficient to satisfy in full
14 the benefits described in that subparagraph, the as-
15 sets shall be allocated pro rata among individuals on
16 the basis of the present value (as of the termination
17 date) of their respective benefits described in that
18 subparagraph.”.

19 (c) CONFORMING AMENDMENTS.—

20 (1) Section 4021 of the Employee Retirement
21 Income Security Act of 1974 (29 U.S.C. 1321) is
22 amended—

23 (A) in subsection (b)(9), by striking “as
24 defined in section 4022(b)(6)”, and

1 (B) by adding at the end the following new
2 subsection:

3 “(d) For purposes of subsection (b)(9), the term ‘sub-
4 stantial owner’ means an individual who, at any time dur-
5 ing the 60-month period ending on the date the determina-
6 tion is being made—

7 “(1) owns the entire interest in an unincor-
8 porated trade or business,

9 “(2) in the case of a partnership, is a partner
10 who owns, directly or indirectly, more than 10 per-
11 cent of either the capital interest or the profits inter-
12 est in such partnership, or

13 “(3) in the case of a corporation, owns, directly
14 or indirectly, more than 10 percent in value of either
15 the voting stock of that corporation or all the stock
16 of that corporation.

17 For purposes of paragraph (3), the constructive ownership
18 rules of section 1563(e) of the Internal Revenue Code of
19 1986 shall apply (determined without regard to section
20 1563(e)(3)(C)).”.

21 (2) Section 4043(c)(7) of such Act (29 U.S.C.
22 1343(c)(7)) is amended by striking “section
23 4022(b)(6)” and inserting “section 4021(d)”.

24 (d) EFFECTIVE DATES.—

1 (1) IN GENERAL.—Except as provided in para-
2 graph (2), the amendments made by this section
3 shall apply to plan terminations—

4 (A) under section 4041(c) of the Employee
5 Retirement Income Security Act of 1974 (29
6 U.S.C. 1341(c)) with respect to which notices
7 of intent to terminate are provided under sec-
8 tion 4041(a)(2) of such Act (29 U.S.C.
9 1341(a)(2)) after December 31, 2002, and

10 (B) under section 4042 of such Act (29
11 U.S.C. 1342) with respect to which proceedings
12 are instituted by the corporation after such
13 date.

14 (2) CONFORMING AMENDMENTS.—The amend-
15 ments made by subsection (c) shall take effect on
16 January 1, 2003.

17 **SEC. 210. BENEFIT SUSPENSION NOTICE.**

18 (a) MODIFICATION OF REGULATION.—The Secretary
19 of Labor shall modify the regulation under subparagraph
20 (B) of section 203(a)(3) of the Employee Retirement In-
21 come Security Act of 1974 (29 U.S.C. 1053(a)(3)(B)) to
22 provide that the notification required by such regulation
23 in connection with any suspension of benefits described in
24 such subparagraph—

1 (1) in the case of an employee who returns to
2 service described in section 203(a)(3)(B)(i) or (ii) of
3 such Act after commencement of payment of bene-
4 fits under the plan, shall be made during the first
5 calendar month or the first 4 or 5-week payroll pe-
6 riod ending in a calendar month in which the plan
7 withholds payments, and

8 (2) in the case of any employee who is not de-
9 scribed in paragraph (1)—

10 (A) may be included in the summary plan
11 description for the plan furnished in accordance
12 with section 104(b) of such Act (29 U.S.C.
13 1024(b)), rather than in a separate notice, and

14 (B) need not include a copy of the relevant
15 plan provisions.

16 (b) EFFECTIVE DATE.—The modification made
17 under this section shall apply to plan years beginning after
18 December 31, 2002.

19 **SEC. 211. STUDIES.**

20 (a) MODEL SMALL EMPLOYER GROUP PLANS
21 STUDY.—As soon as practicable after the date of the en-
22 actment of this Act, the Secretary of Labor, in consulta-
23 tion with the Secretary of the Treasury, shall conduct a
24 study to determine—

25 (1) the most appropriate form or forms of—

1 (A) employee pension benefit plans which
2 would—

3 (i) be simple in form and easily main-
4 tained by multiple small employers, and

5 (ii) provide for ready portability of
6 benefits for all participants and bene-
7 ficiaries,

8 (B) alternative arrangements providing
9 comparable benefits which may be established
10 by employee or employer associations, and

11 (C) alternative arrangements providing
12 comparable benefits to which employees may
13 contribute in a manner independent of employer
14 sponsorship, and

15 (2) appropriate methods and strategies for
16 making pension plan coverage described in para-
17 graph (1) more widely available to American work-
18 ers.

19 (b) MATTERS TO BE CONSIDERED.—In conducting
20 the study under subsection (a), the Secretary of Labor
21 shall consider the adequacy and availability of existing em-
22 ployee pension benefit plans and the extent to which exist-
23 ing models may be modified to be more accessible to both
24 employees and employers.

1 (c) REPORT.—Not later than 18 months after the
2 date of the enactment of this Act, the Secretary of Labor
3 shall report the results of the study under subsection (a),
4 together with the Secretary's recommendations, to the
5 Committee on Education and the Workforce and the Com-
6 mittee on Ways and Means of the House of Representa-
7 tives and the Committee on Health, Education, Labor,
8 and Pensions and the Committee on Finance of the Sen-
9 ate. Such recommendations shall include one or more
10 model plans described in subsection (a)(1)(A) and model
11 alternative arrangements described in subsections
12 (a)(1)(B) and (a)(1)(C) which may serve as the basis for
13 appropriate administrative or legislative action.

14 (d) STUDY ON EFFECT OF LEGISLATION.—Not later
15 than 5 years after the date of the enactment of this Act,
16 the Secretary of Labor shall submit to the Committee on
17 Education and the Workforce of the House of Representa-
18 tives and the Committee on Health, Education, Labor,
19 and Pensions of the Senate a report on the effect of the
20 provisions of this Act and title VI of the Economic Growth
21 and Tax Relief Reconciliation Act of 2001 on pension plan
22 coverage, including any change in—

23 (1) the extent of pension plan coverage for low
24 and middle-income workers,

25 (2) the levels of pension plan benefits generally,

1 (3) the quality of pension plan coverage gen-
2 erally,

3 (4) workers' access to and participation in pen-
4 sion plans, and

5 (5) retirement security.

6 **SEC. 212. INTEREST RATE RANGE FOR ADDITIONAL FUND-**
7 **ING REQUIREMENTS.**

8 (a) SPECIAL RULE.—Subclause (III) of section
9 302(d)(7)(C)(i) of the Employee Retirement Income Secu-
10 rity Act of 1974 (29 U.S.C. 1082(d)(7)(C)(i)) is
11 amended—

12 (1) by striking “2002 or 2003” in the text and
13 inserting “2001, 2002, or 2003”, and

14 (2) by striking “2002 OR 2003” in the heading
15 and inserting “2001, 2002, OR 2003”.

16 (b) PBGC.—Subclause (IV) of section
17 4006(a)(3)(E)(iii) of such Act (29 U.S.C.
18 1306(a)(3)(E)(iii)) is amended to read as follows—

19 “(IV) In the case of plan years beginning after
20 December 31, 2001, and before January 1, 2004,
21 subclause (II) shall be applied by substituting ‘100
22 percent’ for ‘85 percent’ and by substituting ‘115
23 percent’ for ‘100 percent’. Subclause (III) shall be
24 applied for such years without regard to the pre-
25 ceding sentence. Any reference to this clause or this

1 subparagraph by any other sections or subsections
2 (other than sections 4005, 4010, 4011 and 4043)
3 shall be treated as a reference to this clause or this
4 subparagraph without regard to this subclause.”.

5 (c) EFFECTIVE DATE.—The amendments made by
6 this section shall take effect as if included in the amend-
7 ments made by Section 405 of the Job Creation and
8 Worker Assistance Act of 2002.

9 **SEC. 213. PROVISIONS RELATING TO PLAN AMENDMENTS.**

10 (a) IN GENERAL.—If this section applies to any plan
11 or contract amendment—

12 (1) such plan or contract shall be treated as
13 being operated in accordance with the terms of the
14 plan for purposes of the Employee Retirement In-
15 come Security Act of 1974 during the period de-
16 scribed in subsection (b)(2)(A); and

17 (2) except as provided by the Secretary of the
18 Treasury, such plan shall not fail to meet the re-
19 quirements of section 204(g) of the Employee Re-
20 tirement Income Security Act of 1974 by reason of
21 such amendment.

22 (b) AMENDMENTS TO WHICH SECTION APPLIES.—

23 (1) IN GENERAL.—This section shall apply to
24 any amendment to any plan or annuity contract
25 which is made—

1 (A) pursuant to any amendment made by
2 this Act or title VI of the Economic Growth and
3 Tax Relief Reconciliation Act of 2001, or pur-
4 suant to any regulation issued by the Secretary
5 of Labor under this Act or such title VI; and

6 (B) on or before the last day of the first
7 plan year beginning on or after January 1,
8 2005.

9 In the case of a governmental plan (as defined in
10 section 414(d) of the Internal Revenue Code of
11 1986), this paragraph shall be applied by sub-
12 stituting “2007” for “2005”.

13 (2) CONDITIONS.—This section shall not apply
14 to any amendment unless—

15 (A) during the period—

16 (i) beginning on the date the legisla-
17 tive or regulatory amendment described in
18 paragraph (1)(A) takes effect (or in the
19 case of a plan or contract amendment not
20 required by such legislative or regulatory
21 amendment, the effective date specified by
22 the plan); and

23 (ii) ending on the date described in
24 paragraph (1)(B) (or, if earlier, the date

1 the plan or contract amendment is adopt-
2 ed),
3 the plan or contract is operated as if such plan
4 or contract amendment were in effect; and
5 (B) such plan or contract amendment ap-
6 plies retroactively for such period.